Aircraft Services International, Inc. and District 100, International Association of Machinists & Aerospace Workers, AFL-CIO. Case 12-CA-10076

July 13, 1982

DECISION AND ORDER

By Members Fanning, Jenkins, and Zimmerman

Upon a charge filed on March 3, 1982, by District 100, International Association of Machinists & Aerospace Workers, AFL-CIO, herein called the Union, and duly served on Aircraft Services International. Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 12, issued a complaint on March 29, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 4, 1981, following a Board election in Case 12-RC-6066, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about September 8, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 12, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 29, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 5, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent

thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the Motion for Summary Judgment, Respondent admits that the Union has requested that it bargain and that it has refused to do so, but contends that the certification of the Union is invalid because the unit certified is inappropriate for the purposes of collective bargaining. Respondent also alleges that it has been denied fundamental due process in its efforts to challenge the appropriateness of the unit. Specifically, Respondent asserts that the Hearing Officer improperly refused to grant its request for a continuance.

Review of the record herein, including that in the representation proceeding, Case 12-RC-6066, establishes that, upon a petition duly filed under Section 9(c) of the Act, a hearing was held before a hearing officer of the National Labor Relations Board. Thereafter, the Regional Director issued a Decision and Direction of Election on April 15, 1981, wherein he found that the petitioned-for unit of all tank farm and transport employees employed by Respondent at Tampa International Airport, Tampa, Florida, including all attendants, operators, mechanics and transport truck drivers, but excluding all office clerical employees, building and auto maintenance employees, ramp agents, janitorialmaid employees, guards and supervisors as defined in the Act, constitutes an appropriate unit for the purposes of collective bargaining, and directed that an election by secret ballot be conducted among the employees in that unit.

Respondent filed a request for review on April 24, 1981, alleging, inter alia, that the Regional Director made erroneous factual conclusions that there was a sufficient community of interest between the tank farm workers and the transport drivers, and that a unit limited to tank farm workers and transport drivers, and not including all of the unorganized employees employed by Respondent at the Tampa International Airport, was inappropriate. Respondent also contended that the Hearing Officer erred in not granting its motion for a continuance. By telegraphic order of May 6, 1981, the Board denied Respondent's request for review.

¹ Official notice is taken of the record in the representation proceeding, Case 12-RC-6066, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

In accordance with the Regional Director's Decision and Direction of Election, a secret-ballot election was conducted on May 15, 1981. The tally of ballots shows that the Union won the election. Respondent filed timely objections to the election, alleging that the Regional Director's unit determination was factually erroneous and that its request for a continuance had been improperly denied. On June 4, 1981, after an administrative investigation, the Regional Director for Region 12 issued a Supplemental Decision, Order, and Certification of Representation. Respondent filed a timely request for review of the Supplemental Decision, Order and Certification of Respresentation, reiterating the contentions made in its objections. By telegraphic order of July 9, 1981, the Board denied Respondent's request for review.

As noted, in its answer to the complaint and opposition to the Motion for Summary Judgment, Respondent denies the appropriateness of the unit and alleges that the Regional Director erred in certifying the unit requested. Respondent contends that the only proper bargaining unit includes all 47 of the unrepresented employees at its Tampa, Florida, station and not just the 8 tank farm and transport employees. Respondent also contends that the Hearing Officer's refusal to grant a continuance constituted a denial of due process. Finally, in its answer to the complaint, Respondent contends that it is without knowledge to answer the allegation that the Union is a labor organization within the meaning of Section 2(5) of the Act.

All of these issues, the appropriateness of the unit, the denial of a continuance, and the Union's status under Section 2(5) of the Act, were litigated and decided in the underlying representation proceeding. Respondent has not alleged any newly discovered evidence in this proceeding which would controvert any of the findings and conclusions made as to such issues in the representation case. Nor do any of Respondent's contentions raise any substantial or material issues of fact or law which would warrant reconsideration of those issues or a hearing herein.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discov-

ered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

· FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent Aircraft Services International, Inc., a Delaware corporation with an office and place of business in Tampa, Florida, is engaged in the business of providing fueling services and related services for airlines at Tampa International Airport. During the past 12 months, Respondent, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to companies who, in turn, meet a jurisdictional standard other than solely indirect inflow or outflow.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

District 100, International Association of Machinists & Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All tank farm and transport employees employed by the Respondent at Tampa International Airport, Tampa, Florida, including all attendants, operators, mechanics and transport truck drivers; excluding all office clerical employees, building and auto maintenance employees, ramp agents, janitorial-maid employees, guards and supervisors as defined in the Act.

² See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

2. The certification

On May 15, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 12; designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on June 4, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about August 25, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 8, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 8, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

- 1. Aircraft Services International, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. District 100, International Association of Machinists & Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All tank farm and transport employees employed by Respondent at Tampa International Airport, Tampa, Florida, including all attendants, operators, mechanics and transport truck drivers; excluding all office clerical employees, building and auto maintenance employees, ramp agents, janitorial-maid employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
- 4. Since June 4, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By refusing on or about September 8, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
- 6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Aircraft Services International, Inc., its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District 100, International Association of Machinists & Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All tank farm and transport employees employed by the Respondent at Tampa International Airport, Tampa, Florida, including all attendants, operators, mechanics and transport truck drivers; excluding all office clerical employees, building and auto maintenance employees, ramp agents, janitorial-maid employees, guards and supervisors as defined in the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
- (a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.
- (b) Post at its Tampa International Airport, Tampa, Florida, location copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's

representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District 100, International Association of Machinists & Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All tank farm and transport employees employed by the Employer at Tampa International Airport, Tampa, Florida, including all attendants, operators, mechanics and transport truck drivers; excluding all office clerical employees, building and auto maintenance employees, ramp agents, janitorial-maid employees, guards and supervisors as defined in the Act.

AIRCRAFT SERVICES INTERNATIONAL, INC.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."